

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

BETTY J. FUGATE,

Plaintiff,

v.

CIVIL ACTION NO. 5:05-cv-00474

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

JUDGMENT ORDER

Betty J. Fugate, (“plaintiff”) brings this action under 42 U.S.C. § 401 et seq., seeking review of the final decision of the Commissioner of Social Security (“Commissioner”) denying her application for disability insurance benefits under Title II of the Social Security Act. On June 9, 2005, this matter was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and a recommendation (“PF&R”) pursuant to 28 U.S.C. § 636(b)(1)(B). On July 31, 2006, Judge VanDervort recommended that this Court grant plaintiff’s motion for judgment on the pleadings, deny defendant’s motion for judgment on the pleadings, and vacate the final decision of the Commissioner and remand this case for further proceedings consistent with the PF&R. [Docket No. 13]. This Court adopts Judge VanDervort’s recommendation in its entirety.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). In addition, failure


to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort's PF&R were due by August 11, 2006, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections have been filed.

Accordingly, the Court: 1) **GRANTS** plaintiff's motion for judgment on the pleadings [Docket No. 10]; 2) **DENIES** defendant's motion for judgment on the pleadings [Docket No. 11]; 3) **VACATES** the final decision of the Commissioner; and 4) **REMANDS** this case for further proceedings consistent with this Order and Judge VanDervort's PF&R.

The Clerk is directed to mail a copy of this Judgment Order to all counsel of record, any unrepresented party, and Magistrate Judge VanDervort.

IT IS SO ORDERED.

ENTER: September 1, 2006



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE